

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SHIXU BAI.
35 Devoe Road
CHAPPAQUA, NY 10514

PLAINTIFF

v.

KIRSTJEN M. NEILSON
Secretary of the Department of Homeland
Security,
WASHINGTON, D.C. 20528

L. FRANCIS CISSNA,
Director, US Citizen and
Immigration Services
20 Massachusetts Avenue N.W.
WASHINGTON, D.C. 20529

DEFENDANTS

Case No.:

**COMPLAINT TO COMPEL AGENCY ACTION
UNLAWFULLY DELAYED AND FOR
WRIT OF MANDAMUS**

Plaintiff SHIXU BAI brings this suit to compel agency action unlawfully delayed and for mandamus directing defendants to decide his Immigrant Petition as an Alien Entrepreneur (form (I-526)) filed September 30, 2016 and pending before them without decision since that date.

PARTIES

1. Plaintiff SHIXU BAI is currently a holder of an H-1b non-immigrant visa status and currently resides in New York. He is a citizen of the People's Republic of China.

2. Defendant KIRSTJEN M. NIELSON is the Secretary of the Department of Homeland Security. Department of Homeland Security and is responsible for implementing the provisions of the Immigration and Nationality Act relating to the I-526 petitions filed by plaintiff. She is sued in her official capacity.

3. Defendant L. FRANCIS CISSNA is the Director of the United States Citizenship and Immigration Services which is the component of the United States Department of Homeland Security that is responsible for processing and adjudicating the I-526 petitions filed by Plaintiff. He is sued in his official capacity

JURISDICTION

4. This Court has jurisdiction over this matter under 28 U.S.C. Section 1331 (federal question jurisdiction), 28 U.S.C. Section 1361 (mandamus); 28 U.S.C. Section 2201 (Declaratory Judgment Act); and 5 U.S.C. Section 701 (Administrative Procedures Act).

VENUE

5. Venue in the District of Columbia under 28 U.S.C. 1391(e) as each defendant officially resides in in the District of Columbia.

STATEMENT OF FACTS

6. The delayed agency action which is the subject of the relief requested below

arises in connection with Plaintiff's petition for Immigrant Status under the Immigrant Alien Entrepreneur program authorized by Section 203(b)(5), of the Immigration and Nationality Act. 8 U.S.C. 153(b)(5) The purpose of the program is to encourage aliens seeking immigrant status in the United States to make substantial investment in domestic businesses thereby increasing employment of US citizens.

7. The showing required for such approval by defendants is:

A. The required amount of capital has been invested or is actively in the process of being Invested in the new commercial enterprise;

B. The investment capital was obtained by the investor through lawful means;

C. The new commercial enterprise will create at least 10 full-time positions for qualifying employees; and

D. The immigrant investor is or will be engaged in the management of the new commercial enterprise.

8. Plaintiff SHIXU BAI has satisfied each and every requirement of the Immigrant Alien Entrepreneur Program.

9. Plaintiff SHIXU BAI filed his petition for approval as an Alien Entrepreneur on September 30, 2016. Attached hereto as Exhibit A is a copy of form I-797A from the Department of Homeland Security acknowledging receipt of BAI's petition on that date.

10. Plaintiff SHIXU BAI has inquired in writing of the Defendant L. FRANCIS CISSNA seeking to determine the status of his I-526 petition. A copy of such inquiry dated December 14, 2017 is attached hereto as EXHIBIT B. In response to such inquiry SHIXU BAI has been advised in writing that his petition is "in process" without further explanation

or elaboration. According to a website maintained by the United States Citizenship and Immigration Services it is currently processing I-526 petitions filed between January and December of 2016 which were filed *after* the petition of Plaintiff SHIXU BAI.

11. Plaintiff SHIXU BAI has exhausted all administrative remedies and has a right to obtain forthwith a decision on his pending I-526 petition.

12. If Plaintiff SHIXU BAI does not receive a prompt decision on his I-526 petition, his non-immigrant visa status H-1b in the United States shall expire on September 30, 2019 and the Plaintiff SHIXU BAI shall be required to return to his native country, China. Such departure will cause Plaintiff SHIXU BAI the undue burden of separating from his family presently residing in the US. Further plaintiff SHIXU BAI's return to China will delay the processing of his adjustment of status for more than two years versus a processing time-frame of three to six months if such application is filed by Plaintiff SHIXU BAI in the US to adjust status with the US Immigration and Immigration Services with L. FRANCIS CISSNA of the United States Citizenship and Immigration Services.

REQUEST FOR RELIEF

WHEREFORE, based upon the Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Find the Defendants unreasonably and unlawfully delayed in rendering a decision on Plaintiff's pending I-526 petition;
3. Direct Defendants issue a decision on Plaintiff's I-526 petition within 30 days;
4. Award reasonable costs and attorney's fees pursuant to Equal Access to Justice Act, and;

5. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/S/

Stephen M. Truitt (Bar No. 013235)
3504 Macomb Street NW
Washington, DC 20016-3162
stephmac@me.com
202 494 1329 Tel.
202 244 7314 Fax

Serge Bauer (Bar No. 431568)
4500 North Park Avenue, Suite 806
Chevy Chase, Maryland 20815
sbauer@bauerlaw.net
(301) 951-0700

Attorneys for Plaintiff